IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.76 OF 2001

Shri Somnath Damodar Naik,
resident of Capxem, Panchawadi,
Ponda-Goa ... APPELLANT

VERSUS

1. Vivekanand Dinanath Karmali,
major, resident of Kakumoddi,
Quepem,Goa;

2. Santosh Dinanath Karmali,
major, resident of
Kakumoddi,
Quepem,Goa;

3. The United India Insurance
Company Limited,
Curchorem,Goa ... RESPONDENTS.

Mr. M.S. Sonak, Advocate for the Appellant

CORAM : F.I. REBELLO,J.

DATED : JULY 17, 2003.

ORAL JUDGMENT

The Appeal by the Appellant is against the Award of the Claims Tribunal dated 27th November, 2000 whereby the Claims Tribunal held that there was composite negligence of C.W.7, Floriano Gonsalves, and Respondent NO.2 Santosh Dinanath Karmali and in those circumstances, the Claimant would be entitled to recover only 50% of the compensation herein assessed as payable to him. The Claims Tribunal held that Rs.93,600/- would be just compensation and considering the composite

negligence, awarded in favour of the Respondents a sum of Rs.48,000/- only.

2. Considering the matter on record I do not think this is a fit case where this Court should interfere with the amount of compensation as worked out. The only limited issue is whether the Claims Tribunal was right in arriving at a conclusion that there was composite negligence of C.W.7 as well as of the present Respondents.

3. In the Claims Petition as filed, the case of the Claimant/Appellant was that the Respondent NO.2 drove the tempo in a rash and negligent manner and dashed against the rear part of the scooter bearing no.GGS-71 on which portion was the pillion rider. As a consequence therein there was a fracture of the lower part of the leg (ankle) and therefore the compensation. The incident took place on 1-3-1994.

4. The Respondents filed a joint written statement. It was their principal defence that when the Tempo reached near the Railway Station, suddenly one scooterist came from down gradient from Curchorem and entered the No Entry road in a fast speed and dashed against the Tempo and the

right leg of the pillion rider came in contact with the Tempo and sustained injuries. In support of this claim, the Applicant examined himself. In his evidence he stated that the accident took place before they entered the portion of the road beyond which there was No Entry board. In other words, they were on the right side. The next witness examined was Ligorio D'Costa,C.W.4. It is his case that the Appellant was a pillion rider of the scooter driven by one Philoo. It is further his case that the accident took place at a turning point of the road leading to the gas shop. It is his case that the Tempo dashed against his scooter. It has come in his evidence that the point of impact was just at a junction of the down slope and the road going to the Railway Station. Another witness was Ligorio D'Costa (C.W.5), son of Jeronio D'Costa. He also deposes to the accident. There is some inconsistency in the evidence of this witness, but he also states that the accident took place not just at the entry of the Board showing No Entry.

5. C.W.7 is Floriano Gonsalves who is also an eye witness of the accident.

6. No evidence was led on behalf of the

Respondents.

7. Considering the evidence led and in the absence of any evidence on the part of the Respondents insofar as the accident is concerned, the issue No.1 had to be answered against the Respondents. The evidence on record and the preponderance will show that the accident took place on account of rash and negligent driving of the Tempo driver. In these circumstances, the learned Tribunal erred in holding that there was composite negligence. In the light of that, that finding will have to be set aside and the Appeal partly allowed. Considering that, the following Order:

The Appeal is partly allowed. The Award is modified. Instead of Rs.46,800/- the Appellant will be entitled to a sum of Rs.90,600/- jointly and severally. He will be further entitled to interest of 11% from the date of the Petition until payment along with costs and Advocate's fee. Needless to say that the payment of no fault liability is to be adjusted. In the circumstances, the Appeal is disposed of. There shall be no order as to costs.

F.I. REBELLO,J.